

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

UNITED STATES OF AMERICA,)	CASE NO. 8:10CR40
)	
Plaintiff,)	
)	
vs.)	MEMORANDUM
)	AND ORDER
JOSE PEREZ-AGUILAR,)	
)	
Defendant.)	

This matter is before the Court on Findings and a Recommendation (Filing No. 24) of a Magistrate Judge recommending that I accept the Defendant's plea of guilty. There are no objections to the Findings and Recommendation. Pursuant to 28 U.S.C. § 636(b)(1)(C) and NECrimR 11.2(d), the Court has conducted a de novo review of the record.

The Defendant is charged in Count II with a violation of 18 U.S.C. § 1546(a). He pleaded guilty to Counts II and V of the Indictment. The statutory penalty of imprisonment for Count II in this case is 10 years.¹ However, the plea agreement states that the Defendant faces 0-5 years imprisonment for a violation of Count II. The petition to enter a guilty plea and the transcript of the change of plea hearing also reflect that the parties and the Magistrate Judge assumed the penalty was 0-5 years.

Generally this Court would conclude that the plea was not knowingly entered and hold a second change of plea hearing. However, in this case the plea agreement includes a provision stating that under Federal Rule of Criminal Procedure 11(c)(1)(C) the parties agreed on a sentence of 1 year and 1 day – *i.e.*, less than the 5-year term stated in error. Therefore, under this narrow set of circumstances, the Court concludes that the plea was knowingly entered, as the Defendant was advised that if this Court does not accept the

¹The statutory penalty for Count V is not in question.

Rule 11(c)(1)(C) plea agreement his case would be scheduled for trial. In the unlikely event that the Court would not accept the Rule 11(c)(1)(C) agreement, the burden will be on the government's attorney to schedule a re-arraignment.

IT IS ORDERED:

1. The Findings and Recommendation (Filing No. 24) are modified insofar as the statutory term of imprisonment for Count II is 10 years;
2. The Defendant is found guilty. The plea is accepted with the modification noted in ¶ 1. The Court finds that, under the circumstances, the plea of guilty is knowing, intelligent, voluntary, and that a factual basis exists for the plea;
3. I defer acceptance of the plea agreement until the time of sentencing pursuant to Federal Rule of Criminal Procedure 11(c)(3). Unless otherwise stated at the time of sentencing, the plea agreement will be deemed accepted upon the pronouncement of the judgment and sentence; and
4. This case shall proceed to sentencing.

DATED this 7th day of May, 2010.

BY THE COURT:

s/Laurie Smith Camp
United States District Judge